

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

ARAMARK UNIFORM SERVICES, INC.

Employer

and

Case No. 11-RC-6630

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL
UNION NO. 175, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Aramark Uniform Services, Inc., is a Delaware corporation, with a facility located at Bluefield, Virginia, where it is engaged in the business of cleaning and renting uniforms. The Petitioner, Chauffeurs, Teamsters and Helpers Local Union No. 175, affiliated with the International Brotherhood of Teamsters, presently represents separate units of employees at the Employer's Bluefield facility: 1) production employees who run the Employer's laundry facility, and 2) sales or route drivers¹ who pick up and deliver the Employer's product. The Petitioner seeks to represent a bargaining unit comprised of all full-time and regular part-time payroll clerks, billing clerks, office clerks, accounts receivable clerks, customer service coordinators, accounts payable clerks, and floater clerks,² employed by the Employer at its Bluefield, Virginia facility, excluding all other employees, guards, professional

¹ The contract covering the route drivers at Bluefield also covers route drivers at the Employer's Charleston, West Virginia, and Pikeville, Kentucky locations.

² At the hearing, the Petitioner amended its petition to include the positions of accounts payable clerk, customer service coordinator, and floater clerk.

employees and supervisors as defined by the Act. The Petitioner filed this petition under Section 9(c) of the National Labor Relations Act. A hearing officer of the Board held a hearing, and the Petitioner filed a post-hearing brief. The Employer did not appear at the hearing,³ but it did file a post-hearing brief.⁴

As evidenced at the hearing and in the parties' briefs, the sole issue is whether the positions of payroll clerk and customer service coordinator are confidential, and must be excluded from the unit. The Petitioner contends that the disputed classifications are not confidential, and are, therefore, appropriately included in the petitioned-for unit. The Employer, in its brief, contends otherwise.

I have considered the evidence and the arguments presented by the parties on the issue. As a preliminary matter, as discussed below, I have concluded that the petitioned-for unit comprised solely of office clericals is an appropriate unit. In regard to the Employer's assertion that the payroll clerk and customer service coordinator positions are confidential, as shown below, I will set forth the standard used to analyze whether employees are confidential, and examine the job duties of the positions. I have concluded that the Employer did not meet its burden of demonstrating that the positions of payroll clerk and customer service coordinator are confidential, and, I shall, therefore, include those positions in the unit found appropriate herein.

³ The Board requires at least five working days' notice of a representation hearing. See Croft Metals, Inc., 337 NLRB 688, 688 (2002). Here the parties received adequate notice of the hearing. A Notice of Hearing issued on March 23, 2006, setting the hearing for April 3, 2006. By Order dated March 31, 2006, the hearing was rescheduled to April 5, 2006. The parties, therefore, were afforded notice of the hearing date totaling ten business days.

⁴ As noted throughout my decision, the Employer relies largely on evidence that is not contained in the record.

I. DISCUSSION

A. Appropriate Unit

As a threshold matter, as shown above, the Employer did not appear at the hearing, and, therefore, took no initial position on the appropriateness of the unit. In its brief, the Employer does not contest the appropriateness of a separate unit comprised of office clericals. It is settled that the Board does not normally include office clericals in other units, and, concomitantly, has found units consisting solely of office clericals to be separate appropriate units, provided they share “a distinct community of interest apart from an employer’s other employees” Dinah’s Hotel and Apartments, 295 NLRB 1100, 1101 (1989). However, a unit consisting solely of office clericals does not appear to be presumptively appropriate. In these circumstances, the burden is on a petitioner to present at least some evidence establishing that the unit is appropriate, even if an employer takes no position concerning the unit. Allen Health Care Services, 332 NLRB 1308, 1308 (2000). The record here shows that the petitioned-for unit covers all of the office clericals at the Employer’s Bluefield facility, and that employees in all of those positions perform clerical duties. In addition, all of those positions are segregated from the facility’s production area and these employees do not perform any production duties. In those circumstances, I find that the proposed unit of office clericals is an appropriate unit.

B. Confidential Employee Status

The Employer contends that the positions of payroll clerk and customer service coordinator are confidential, and, therefore, their inclusion in the petitioned-for unit is

inappropriate.⁵ The record does not support the Employer's contention that the disputed classifications are confidential. It is well settled that the burden is on the party asserting confidential employee status to establish it. S.S. Joachim and Anne Residence, 314 NLRB 1191, 1195-1196 (1994). The Board narrowly construes confidential status. Los Angeles New Hospital, 244 NLRB 960, 961 (1979), enforced, 640 F.2d 1017 (9th Cir. 1981). The Board applies two tests to determine whether an employee is confidential. The Board's "labor nexus test" deems employees to be confidential only if they "assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations." NLRB. v. Hendricks County Rural Electric Membership Corporation, 454 U.S. 170, 173 (1981) (quoting B.F. Goodrich Co., 115 NLRB 722, 724 (1956)).

As an alternative, the Board has also determined that employees who "regularly have access to confidential information concerning anticipated changes which may result from collective-bargaining negotiations" are confidential employees. Hendricks, 454 U.S. at 189 (quoting Pullman Standard Div. of Pullman, Inc., 214 NLRB 762, 762-763 (1974)). In applying this alternative test, the Board looks to the timing of when the employee at issue is made privy to the information, that is, whether this access occurs before the information is made known to the union or employees involved. Associated Day Care Services, 269 NLRB 178, 180-181 (1984). Accord Inland Steel Co., 308 NLRB 868, 877 (1992). The Board has also considered whether the employee has "played some role in creating the document or in making the substantive decision being recorded" Id. Accord Inland Steel, 308 NLRB at 877 (1984). It is settled that mere access to confidential information or personnel records does not require exclusion from a

⁵ The Employer's assertion that the classifications of payroll clerk and customer service coordinators are excluded from bargaining units at specific locations is not supported by the record evidence.

bargaining unit as a confidential employee. Id. at 873-874. See also The Bakersfield Californian, 316 NLRB 1211, 1211-1212 (1995) (typing and processing of various documents including payroll, disciplinary actions, hiring information, and notes from bargaining sessions did not render employee confidential).

With respect to the payroll clerk position, there is one such position at the Employer's facility. The position profile overview for the payroll clerk states that a payroll clerk "perform[s] clerical duties required for timely reporting and paying for hours worked." To that end, the payroll clerk inputs time-keeping data into a computerized payroll system that tracks employees' absenteeism. The payroll clerk sends out FMLA forms to employees after they have missed 3 days of work. The payroll clerk also reports workers' compensation claims and maintains those files. The payroll clerk maintains the employees' personnel files. The payroll clerk schedules interviews for the Production Manager, greets the applicants, provides the paperwork for the applicants, and checks to make sure that the paperwork is complete. The record discloses that the only duty that the payroll clerk performs for the current general manager is to make copies of documents, including employee performance appraisals. In sum, the record reflects that the payroll clerk has no decisional authority in her areas of responsibility and primarily enters, retrieves, and files information. The payroll clerk has a separate office located in the front of the Employer's facility adjacent to the accounts receivables office, and a large open room which houses the remaining clericals, except for the customer services coordinators. The payroll clerk reports to the Employer's comptroller, as do the remaining clericals, except for the customer service coordinators.

With respect to the customer service coordinator position, there are two employees in this job classification. Employees in these positions share an office which is located at the back of

the Employer's facility, separate from the production area. These employees report to the Employer's general manager, and spend most of their time on the telephone taking customer complaints, documenting the complaints, routing the complaints to the appropriate route driver or district manager, and typing, distributing, and filing a report detailing the resolution of the complaints.

The record discloses that customer service coordinators have no input into the resolution of customer complaints; rather, they assist in a purely clerical capacity. In addition, customer service coordinators maintain files containing the Employer's customer contracts. In that regard, in addition to filing the contracts, they distribute copies of the contracts to the customer, district managers, or, upon request, to a route driver. The record reflects that the customer service coordinators do not draft any provisions of the contracts and are not asked about the substance of the contracts.

On the basis of the foregoing, the record is clear that neither classification confers confidential status. First, in regard to the labor nexus test, there is no record evidence to establish that employees in either job classification assist persons who "formulate, determine, and effectuate management policies in the field of labor relations." Hendricks, 454 U.S. at 173 (citation omitted). In that regard, the record does not disclose the duties of the comptroller, to whom the payroll clerk reports, nor does it disclose the duties of the general manager, to whom the customer service coordinators report. The Employer's assertions in its brief that the general manager is responsible for and works with labor relations directors and other senior managers in the areas of contract negotiations, grievance adjustments, arbitrations, policies and work rules including the issuance of discipline, and customer acquisition and retention, have no record

support. Accordingly, there is no showing that either the payroll clerk position or customer service coordinator position fall within the Board's labor nexus test.

Second, in regard to the alternative test, the Board has held that mere access to confidential labor relations material is insufficient to confer confidential status absent a showing that a disputed employee had input into the decision being made or regularly accessed the information before the union or employees involved had knowledge of the information. Inland Steel, 308 NLRB at 877. Here the record does not establish that employees in either classification have input into the creation of such documents or the decisions being made. With respect to customer service coordinators, as an initial matter, customer complaints and customer contracts, while arguably sensitive information, do not appear to constitute confidential labor relations material. In that regard, the Employer's assertion that customer service coordinators "have access to sales figures, gross margins and other confidential proprietary information," is not supported by the record.

With respect to the payroll clerk, the payroll clerk has access to materials such as personnel files and time cards and the like, which appear to constitute labor relations material. However, the record discloses that the payroll clerk plays no creative role in regard to those materials; rather the payroll clerk's function appears to be nothing more than reportorial or ministerial. Moreover, while the payroll clerk may have access to information that is labor-related, the record did not establish that the payroll clerk's duties involve exposure to "anticipated changes that may result from collective bargaining negotiations." Inland Steel, 308 NLRB at 877. In addition, no evidence was adduced as to whether the payroll clerk would be privy to confidential labor relations material before a union or interested employee would be informed of same. I note that the assertions by the Employer with respect to the payroll clerk's

duties, such as access to and active participation in developing management proposals and counter proposals, position statements, discipline decisions, and hiring decisions including interviewing and hiring recommendations, attendance at management and grievance meetings, and participation in the adjustment of grievances, have no record support.

Accordingly, I find that the Employer has not met its burden in proving that the payroll clerk position and the customer service coordinator position are confidential employees. Therefore, I find that the payroll clerk positions and customer service coordinator positions are appropriately included in the unit herein.⁶

II. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the act, and it will effectuate the purposes of the act to assert jurisdiction in this case.⁷
3. The Union involved claims to represent certain employees of the Employer.

⁶ The Employer's reliance on Chrysler Corp., 173 NLRB 1046 (1968), Ladish Co., 178 NLRB 90 (1969), Telephone Utilities of Alaska, 308 NLRB 918 (1992), is misplaced, as the Board found none of the disputed employees in those cases to be confidential employees. The Employer's citation of Levitz Furniture Co., 192 NLRB 61 (1971) is equally unavailing as the confidential status of employees was not an issue in that case.

⁷ In its brief, the Employer does not contest jurisdiction. I take administrative notice of a complaint that issued against the Employer in Board Case No. 11-CA-18212, on March 31, 1999, wherein jurisdiction was asserted. That case settled non-Board and is not a reported decision.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time payroll clerks, billing clerks, office clerks, accounts receivable clerks, accounts payable clerks, customer service coordinators, and floater clerks, employed by the Employer at its Bluefield Virginia facility; excluding all other employees, and guards, professional employees and supervisors as defined in the Act.

III. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Chauffeurs, Teamsters, and Helpers Local Union No. 175, affiliated with the International Brotherhood of Teamsters. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who

have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U. S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P. O. Box 11467, Winston-Salem, NC 27116-1467 on or before **April 21**,

2006. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 336/631-5210. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St. N. W. Washington, DC 20570 and received by the Board in Washington by **April 28, 2006**. The request may not be filed by facsimile.

Dated at Winston-Salem, North Carolina, on the 14th day of April 2006.

/s/ Patricia L. Timmins

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